89-293

No. _____

In The

Supreme Court of the United States

October Term, 1989

HAROLD O. POSTMA,

Petitioner,

vs.

THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

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QUESTION PRESENTED

DO THE MAXIMUM FEE LIMITATIONS AND ADVANCE APPROVAL REQUIREMENTS VIOLATE THE SIXTH AMENDMENT BY CREATING AN UNNECESSARY CHILLING EFFECT AND DISCOURAGING EFFECTIVE ASSISTANCE OF COUNSEL?

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The Petitioner, Harold O. Postma, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Iowa in *Postma v. The Iowa District Court for Plymouth County,* 439 N.W.2d 179 (Iowa 1989).

OPINION BELOW

The opinion of the Supreme Court of Iowa appears at 439 N.W.2d 179 (Iowa 1989) and is reprinted in the Appendix hereto, page App. 29.

The decision of the trial court judge, Hon. Phillip S. Dandos dated September 16, 1987 and the Order denying Petitioner's Motion for New Trial dated October 12, 1987, are reprinted and included in the Appendix at pages App. 13-15.

JURISDICTION

The decision of the Iowa Supreme Court was filed on April 19, 1989. The time for filing this Petition was extended by the Honorable Harry A. Blackmun to August 17, 1989. This court's jurisdiction is pursuant to 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment VI of the United States Constitution is involved in the instant case.

STATEMENT OF THE CASE

This case involves the application of the Sixth Amendment, Constitution, U.S., to the payment of attorneys' fees for those appointed to represent indigents accused of crimes in state court systems. It arises from a criminal case in which Harold O. Postma, the Petitioner, was appointed to represent an indigent person, Michael C. Purviance, who was ultimately acquitted of all charges. Postma was denied payment of substantially all of the fees requested for his services (Postma was paid for

$1,000 of $6,546) although the court found that all the hours expended were necessary (App. 13). The balance of the fees were denied because the Iowa Supreme Court interpreted its Guidelines on Costs of Court-Appointed Counsel to be a maximum on such fees on a per case basis (here, $1,000) and that such maximums could only be exceeded when the attorney had obtained *advance* approval from the trial court to exceed those maximums (App. 15). The Iowa court also determined that these Guidelines are a proper exercise of their supervisory powers over the courts, although the legislature in Iowa had mandated "reasonable compensation" (§ 815.7, 1987 Code of Iowa (App. 1)) in accordance with the Sixth Amendment and its interpretations in numerous cases by the Supreme Court of the United States.

The Petitioner contended that the Guidelines (App. 2-7) violated the Sixth Amendment because the maximum limits would operate to deny effective assistance of counsel to indigent persons accused of crimes and the requirement of *advance* approval during the pendency of the case has a chilling effect on the exercise of the constitutional rights of the accused. However, the Iowa Supreme Court held, without analysis or support in any other case, that its own rule, the Guidelines, did not violate the Sixth Amendment (App. 27).

Nature of the Criminal Case. The criminal case arose from a series of harassment incidents initiated by two individuals, Marlin Wielenga and Gary Ruden. These events occurred over a period of twelve months, but only the last 50 to 60 incidents were recorded on a log by Purviance. Marlin Wielenga was divorced by his former spouse, Jan Wielenga, who early in 1986, met Michael C.

Purviance. Purviance had recently left a career in law enforcement (eight years as a police officer in Des Moines, Iowa, followed by several months with the Iowa Conservation Department) and operated a rental store in Le Mars, Iowa.

In the latter part of 1986, the Wielenga's divorce was finalized, Purviance moved into the house occupied by Jan Wielenga and the harassment intensified. In October, 1986, Purviance applied and obtained a permit to carry a concealed weapon from the local sheriff and listed one of the reasons as "self protection."

On January 8, 1987, these three men became involved in an altercation in front of the Jan Wielenga residence in Le Mars, Iowa. In the course of the fight, Ruden attacked Purviance from behind and held him for Wielenga to punch, stating "now, you son of a bitch, we're going to kill you." They pulled his coat over has head and arms, but he was able to reach the gun which was in a holster under a vest. Purviance fired into the air twice and then Ruden and Wielenga were able to twist the gun so that it pointed at his head and then at his chest. Purviance was severely beaten and injured; he was charged with Attempt to Commit Murder and jailed. Neither Wielenga nor Ruden required medical examination; they were released although Ruden admitted his attempt to discharge the weapon at Purviance's vital organs.

Purviance was incarcerated for nine days until January 17, 1987. The State had promised a full investigation would be completed by the next day, January 9, 1987, and both Postma and Purviance cooperated in this, but the State dropped the investigation.

Following a lengthy preliminary hearing on January 17, the initial charge was reduced to three charges, namely, Going Armed With Intent, § 708.8, a Class D felony; Participating in a Riot, § 723.1, an aggravated misdemeanor; and, Assault (without intent), § 708.2(2), a serious misdemeanor. Since the alleged offenses involved the use of a firearm, § 902.7 of the Code of Iowa required a minimum five (5) year sentence of incarceration without parole. The foregoing charges were embodied in a Trial Information filed on February 16, 1987.

Two months after the incident, on March 2, 1987, Purviance was arraigned on these charges. Harold O. Postma was appointed to represent Purviance "at public expense" following an application for court-appointment which had been filed on January 20, 1987. Postma had previously counseled Purviance with regard to his rental business (which declined substantially during this period of harassment) and although "privately retained" to defend the criminal charges, (App. 23) Purviance was unable to pay anything for his services.

Purviance did not waive speedy trial and the cause was specifically "assigned for trial on March 18, 1987, at 9:30 a.m." Immediately prior to arraignment, Postma had a conversation with the county attorney, Robert J. Dull, in which Dull indicated that the fact that Wielenga was leaving the state and moving to Colorado would result in the case dying a natural death. The County Attorney failed to appear for trial on March 18, 1987, at 9:30 a.m. and the State's witnesses were in Colorado. When the county attorney later arrived, he requested a continuance orally to the court until the 28th day of April, 1987. Thereafter, Postma filed motions for discovery, including

depositions of Wielenga, Ruden and Stu Dekkinga, the arresting officer, and other requests for discovery and a motion to change venue. These were filed protectively because of time deadlines for the filing of discovery and other pretrial motions.

The prosecutor failed to provide any of the requested discovery prior to the next trial date, April 28, 1987, and the court failed to rule on the motions which necessitated another continuance until June 2, 1987. On April 28, 1987, the depositions of Wielenga and Ruden were taken, but the other discovery materials and the deposition of the arresting officer was not made available until a couple days prior to the trial date of June 2, 1987. At the completion of discovery, the prosecutor, contrary to his statement in March that "the case will die a natural death" and his actions (delay in filing a Trial Information, failing to appear at the first trial and delays in producing discovery materials) announced that there would be no plea bargaining and that he would be going to trial to try to put Purviance away for as long as possible.

Postma had not applied to exceed the maximums of compensation as outlined in the Guidelines since "such applications . . . ordinarily shall be made at arraignment, and in any event within the period available for discovery prior to trial" (App. 3) and, at arraignment the State had indicated that the case "will die a natural death" and had maintained this course of action during the "period available for discovery prior to trial," (App. 3) by its delays and inaction.

Also, the Iowa court had not previously indicated either by the language of the Guidelines or by a ruling

that the maximum amounts per charge could not be aggregated, but would be considered to be a maximum per case according to the most serious charge of a multi-count indictment. These three charges were a felony ($1,000), an aggravated misdemeanor ($1,000) and a serious misdemeanor ($500) for a total of $2,500 as maximum compensation.

When the prosecutor for the State announced that he would not plea bargain, but intended to go to trial, the times for anticipating that the maximums would be exceeded had expired, but Postma's attention was now focused on the important matters at hand relating to rendering effective assistance of counsel in preparation for the trial which, due to the surprise announcement of the prosecutor, was now a certainty. Information on prospective jurors and witnesses had to be finalized and, to his own detriment, Postma focused on the interests of his client, and his duty to render effective assistance of counsel rather than on his own pocketbook.

At the time of this case's proceedings, Postma had six and one-half years of experience as prosecutor in Sioux County, Iowa, and had eleven years experience as a trial lawyer. As the attorney for Purviance, he had the sole responsibility for investigating the prior twelve months of harassment by Wielenga and Ruden, selecting the appropriate witnesses of this harassment (including police officers) from the many that were available and eager to testify for Mike. Postma also had the responsibility of completing the police investigation and in doing this located Jason Annstine, a neighbor boy who

had observed Ruden exit the passenger side of the Wielenga vehicle when it arrived that evening and hide behind a tree in Annstine's front yard in order to later attack Purviance from the rear. This substantially discredited Wielenga's and Ruden's versions of the events and supported the other indications that they premeditated the altercation in order to kill or maim Mike.

Since this case involved a defendant who was living with the ex-spouse and children of Wielenga in a sheltered, rural community where this is not commonplace, the defense of Mike was unpopular with some local residents and, initially, the jurors who did not know the history of harassment.

Postma also had to research and prepare the defenses of justification, compulsion and self-defense as well as to research each of the three individual charges. This was done successfully since the court granted the motion to dismiss the Riot charge at the close of the State's evidence and the jury accepted Mike's version of the events and completely acquitted him.

Postma requested that he be paid $60.00 per hour for a total of $6,652.50 for this experienced, efficient, competent, successful representation on charges which could have resulted in a five year minimum sentence without parole. The court denied the request, determining that although all the hours were necessary, $45.00 was the usual and customary fee and that he should be paid $1,000 plus expenses of $92.10; the Iowa Supreme Court affirmed this.

REASONS FOR GRANTING THE WRIT

DO THE MAXIMUM FEE LIMITATIONS AND ADVANCE APPROVAL REQUIREMENTS VIOLATE THE SIXTH AMENDMENT BY CREATING AN UNNECESSARY CHILLING EFFECT AND DISCOURAGING EFFECTIVE ASSISTANCE OF COUNSEL?

The Iowa Supreme Court and the trial court found that the guidelines were valid and that the maximum fee limits could be strictly imposed on a per case basis, and, that the advance approval requirements for exceeding those maximums could be rigidly interpreted to deny fees for necessary hours expended to defend an innocent indigent person who had been unjustly accused of multiple crimes and upon trial, acquitted. *Postma v. The Iowa District Court for Plymouth County*, 439 N.W.2d 179 (Iowa 1989). The court reasoned that there was enough flexibility in the Guidelines to uphold them and that the denial of fees was the fault of Postma's inability to anticipate exceeding the maximums rather than their rigid interpretation of portions of the Guidelines.

This interpretation seriously erodes the Sixth Amendment's guarantee of the right to have counsel provided by the State when a person is unable because of indigency to hire a lawyer as set forth in *Gideon v. Wainwright*, 372 U.S. 335, 82 S.Ct. 792, 9 L.Ed. 2d 799; *Argersinger v. Hamlin*, 407 U.S. 25, 92 S. Ct. 2006, 32 L.Ed. 2d 530.

The Iowa Guidelines assure indigent defendants that all of their attorneys' fees will be paid so long as they do not exercise their constitutional rights to a trial, to confrontation of witnesses at trial and at pre-trial discovery

proceedings, and to compel witnesses to testify on their behalf. If they choose to exercise their constitutional rights they may be compelled to pick and choose which of their rights can be exercised without exceeding the maximums and thus triggering the necessity of obtaining advance approval. And, when approaching such limits, not only on their attorney's fees, but on their constitutional rights, they and their attorney will feel compelled to waive their rights rather than to seek authority to exceed them.

Indigents may believe that by seeking such authority they will only focus more attention on their case by the prosecutor and the court and, if convicted, may thus result in a harsher penalty. This type of chilling effect is "unnecessary and therefore excessive" and is thus invalid. *United States v. Jackson*, 90 U.S. 570, 88 S. Ct. 209, 20 L. Ed. 2d 138 (1968). The language of the Guidelines attempts to create a necessity for such maximums by referring to "a system for monitoring and a basis for predicting and budgeting amounts necessary for such compensation." ¶ 4(b)(1), Guidelines (App. 3). The opinion of the Iowa Supreme Court does not mention this rationale because this statement is blatantly false; there is no system for monitoring predicting or budgeting in use by the court system of Iowa in connection with these appointments.

Previously, the courts had determined fees in indigent cases solely under §815.7 (App. 1) without any difficulty, but in 1985, the legislature of Iowa adopted plans for a court reorganization which would centralize power and administration in the Supreme Court, but would also require them to pay for court appointments from the

same funds. Immediately thereafter these Guidelines were adopted in order to attempt to reduce fees and with the concurrent result of discouraging competent counsel from assisting defendants in the exercise of their constitutional rights. This is apparent from the language of the portions of the Guidelines which were ignored by the Iowa court. Phrases such as "nothing in these guidelines shall affect the duty of the court to determine the amount of allowable compensation for court appointed services *in accordance with applicable statutes,*" (¶ 4(c), Guidelines) and, "the court shall not reduce compensation based upon an attorney's duty to represent the poor but shall consider all of the factors dictated by pertinent statutory law and supreme court decisions, including *certainty of payment,*" (¶ 6, Guidelines) (Emphasis added), are ignored in the application of the Guidelines to the instant case.

A survey of other states indicates that similar maximums are common where there is no statewide Public Defender system (although no other state requires advance approval to exceed such maximums). Alabama, Alaska, Arkansas, Florida, Hawaii, Illinois, Kansas, Kentucky, Mississippi, Nevada, New Hampshire, New Mexico, New York, Oklahoma, South Carolina, Tennessee, Vermont, Virginia, West Virginia and the District of Columbia all have a maximum fee limit on a per case basis or per charge basis. Of these, Arkansas, Kentucky, Mississippi, Oklahoma, South Carolina and West Virginia do not have a mechanism for allowing payment in excess of the maximum amounts. The others generally provide that at the conclusion of the case, the attorney may be

allowed excess compensation where there are "exceptional" or "extraordinary circumstances" or where there is extended or complex representation.

There is a split of authority among the state courts which have reviewed the constitutionality of these maximum limits on fees. The following courts have found that the maximums are not violative of various constitutional provisions: Arkansas (*Sanders v. State*, 276 Ark. 342, 63 S.W. 2d 222 (Arkansas 1982) ($350 was maximum fee on robbery and rape charges); South Carolina (*State v. Goolshy*, 292 S.E. 2d 180 (South Carolina 1982) ($750 did not violate equal protection clause in a capital case)); Illinois (*People v. Atkinson*, 50 Illinois App. 3d 860, 366 N.E. 2d 94 (1977)); Nevada (*Davies v. Markoff*, 92 Nev. 582, 555 P. 2d 490 (1976)); Oklahoma (*Bias v. State*, 568 P. 2d 1269 (Okla 1977)) and Oregon (*Keene v. Jackson County*, 3 Or. App. 551, 474 P. 2d 777, petition den. 257 Or. 335, 478 P. 2d 393 and cert. den. 402 U.S. 995, 29 L.Ed. 2d 161, 91 S. Ct. 2172). However, in Illinois, the court, in *People ex rel Conn v. Randolph*, 35 Ill. 2d 24, 219 N.E. 2d 337, 18 A.L.R. 3d 1065 (1966), was forced to find that the maximums were unconstitutional as applied under the particular factual circumstances ($500 maximum fee exceeded by nine week jury selection causing attorneys to leave regular practice).

These states have relied on a line of reasoning which contends that the constitution does not preclude the representation of indigents at less than full compensation and that when admitted to the practice of law one is aware of the obligation to represent indigents for little or no compensation and thus an attorney cannot object. This same line of reasoning is set forth in *United States v.*

Dillon, 346 F. 2d 633, 635 (Ninth Cir. 1965) cert. den. 382 U.S. 978, 86 S. Ct. 550, 15 L. Ed. 2d 469 (1966) and was cited with approval in *Hurtado v. United States*, 410 U.S. 578, 589, 93 S. Ct. 1157, 1164, 35 L. Ed. 2d 508 (1973).

This line of reasoning was rejected in the context of a civil case, *Mallard v. United States District Court For the Southern District of Iowa*, (No. 87-1490) ___ U.S. ___, 109 S. Ct. 1814, 104 L. Ed 2d 318 (1989). It has also been rejected by state courts in Florida, Kansas and New Hampshire where the statutory maximums have been declared unconstitutional. In Florida there were repeated attacks on the validity of the maximums. These were usually sustained by the trial courts, but rejected by the Florida Supreme Court until *Makemson v. Martin County*, 491 So. 2d 1109 (Fla. 1986). The court found that the maximum fees, "as inflexibly imposed in cases involving unusual or extraordinary circumstances, interfere with the defendant's Sixth Amendment right to have the assistance of counsel for his defense." The court also discussed pro bono service, the complexity of cases (which raises the spectre of ineffective assistance of counsel) and rising costs and overhead.

Similar analyses are found in *Smith v. State*, 118 N.H. 764, 394 A. 2d 834, 3 A.L.R. 4th 568 (1978) ("without adequate compensation for those attorneys, it might be impossible to obtain valid criminal convictions in future prosecutions of indigent defendants") and *State ex rel Stephan v. Smith*, 747 P. 2d 816 (Kan. 1987) where the Kansas court stated:

> The State also has an obligation to pay appointed counsel such sums as will fairly compensate the attorney, not at the top rate, but at a rate

> which is not confiscatory, considering overhead and expenses. . . . Kansas attorneys have an ethical obligation to provide pro bono services for indigents, but the legal obligation rests on the state, not upon the bar as a whole or upon a select few members of the profession." pp. 849-850

Congress has also established maximum fee limits (18 U.S.C. §3006A), but has also provided that excess compensation may be awarded by the court to ensure fairness where there are extraordinary circumstances, *U.S. v. Bailey*, 581 F.2d 984 (1978). In *Bailey*, supra, the court recited the preamble to the federal statute which states that its purpose is:

> "to promote the cause of criminal justice by providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts"

The court went on to state:

> "The Sixth Amendment, of course, guarantees to indigents accused in a federal criminal prosecution not just the 'mere formal appointment' of someone who happens to be a lawyer but more critically legal assistance that is reasonably diligent, conscientious and competent. Clearly, then, courts are to interpret the Act 'to assure competent representation of indigent defendants,' and that objective is disserved by a narrow and miserly construction of the excess-compensation provision. Only if the practicing bar is encouraged to participate broadly and enthusiastically in the defense of indigent criminal defendants can the promise of the Act become a reality."

In *U.S. v. Hunter*, 394 F. Supp. 997 (1975), the court held at page 1001 that "fair compensation" for "extended

or complex" representation may be computed on the basis of *maximum* hourly rates without regard to a separate showing of "exceptional circumstances" in order to ensure "fair compensation" which is the sole standard under the federal statute.

Similar sentiments are expressed in *State v. McKenney*, 582 P.2d 573 (Wash. App. 1978) where an attorney with 5 months experience obtained an acquittal in his first case and sought a fee of $1,751.59 for 56.5 hours including a one-day trial which occurred in 1977. The lower court awarded $700.00 which was less than the overhead for this beginning attorney. The court stated:

> Court-appointed counsel is to be paid a reasonable amount . . . The fee need not be of an amount equal to that from a paying client, but should strike a balance between conflicting interests, including the professional obligation of the lawyer to make legal counsel available and the increasingly heavy burden on the legal profession created by expanded indigent rights. Court appointed counsel should neither be unjustly enriched nor unduly impoverished, but must be awarded an amount which will allow the financial survival of his practice. A county shall pay a reasonable amount for all professional services which are not donated.

The Iowa court has very little rationale for its decision. It sets a poor precedent which strikes deep at the core of the Sixth Amendment by discouraging attorneys from "participating broadly and enthusiastically in the defense of indigent criminals" *U.S. v. Bailey*, supra. Additionally, it probably violates the Fifth Amendment (taking of property without just compensation) and the Fourteenth Amendment's Equal Protection Clause (disparate

services rendered to the poor as opposed to the nonindigent, and, depending on the availability of a Public Defender, (usually located only in cities) among the indigent themselves).

Finally, it destroys the elemental fairness accorded to those who are ultimately acquitted of all crimes as eloquently stated in *Fuller v. Oregon*, 417 U.S. 51, 94 S. Ct. 2116 (1974):

> A defendant whose trial ends without a conviction or whose conviction is overturned on appeal has been seriously imposed upon by society without any conclusive demonstration that he is criminally culpable. His life has been interrupted and subjected to great stress, and he may have incurred financial hardship through loss of job or potential working hours. His reputation may have been greatly damaged. The imposition of such dislocations and hardships without an ultimate conviction is, of course, unavoidable in a legal system that requires proof of guilt beyond a reasonable doubt and guarantees important procedural protections to every defendant in a criminal trial. But Oregon could surely decide with objective rationality that when a defendant has been forced to submit to a criminal prosecution that does not end in conviction, he will be freed of any potential liability to reimburse the State for the costs of his defense.

Unless writ is granted, the potential liability remains upon Purviance and Postma while the state and county are needlessly freed from their obligation to pay for the costs of the defense.

CONCLUSION

For these various reasons, the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

815.7 Fees to attorneys. An attorney appointed by the court to represent any person charged with a crime in this state shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community to be decided in each case by a judge of the district court, including such sum of sums as the court may determine are necessary for investigation in the interests of justice and in the event of appeal the cost of obtaining the transcript of the trial and the printing of the trial record and necessary briefs in behalf of the defendant. Such attorney need not follow the case into another county or into the appellate court unless so directed by the court at the request of the defendant, where grounds for further litigation are not capricious or unreasonable, but if such attorney does so his or her fee shall be determined accordingly. Only one attorney fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized. [51, § 2561-2563; R60, § 1578, 4168-4170; C73, § 3829-3831; C97, § 5314; C24, 27, 31, 35, 39, § 13774; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 775.5; C79, § 815.7]

GUIDELINES ON COSTS OF COURT-APPOINTED COUNSEL

Adopted effective Sept. 3, 1985

Including Amendments Received Through August 3, 1987

1. In implementation of its constitutional duty to exercise supervisory and administrative control of the judicial department, the supreme court deems it necessary to adopt theses guidelines to establish procedures for carrying out judicial department responsibilities relating to payment of attorney fees and expenses for indigents when the law requires such payment from public funds.

2. Nothing in these guidelines shall prevent public bodies from establishing public defender offices pursuant to statute or from entering contracts for attorney services consistent with constitutional and statutory constraints. These guidelines shall apply only to court appointment services in situations where compensation is required by law to be determined by a judge of the district court.

3. In making such appointments, the courts shall consider the attorney's competence, diligence and availability to perform the assigned service. The court also shall consider accessibility of the attorney to the represented person, as well as other relevant factors bearing on the effectiveness and efficiency of services.

4. In performing services, attorneys shall be governed by applicable statutes and rules as well as by relevant provisions of the Iowa Code of Professional Responsibility for Lawyers.

a. When required to do so by law or when the attorney has any question about the propriety of incurring a particular expense, the attorney shall obtain court approval before incurring the obligation.

b. In addition, the attorney must obtain advance district court approval for anticipated compensation in excess of amounts that shall be established for particular categories of cases from time to time by the supreme court. Until modified by subsequent order of this court, those amounts are as shown on exhibit "A" attached to these guidelines.

(1) The purpose of requiring such approval is not to inhibit reasonable necessary services, but to provide a system for monitoring and a basis for predicting and budgeting amounts necessary for such compensation.

(2) In determining whether an application should be sustained, the court shall consider whether the anticipated services are necessary in the reasonable professional judgment of counsel. The requirement that an application be made shall not have any bearing on whether an application should be sustained. Moreover, the court shall not require disclosure by the attorney of any information not subject to discovery under applicable law.

(3) Such applications, except as to appeals, ordinarily shall be made at arraignment, and in any event within the period available for discovery prior to trial. They shall not be made later except upon a showing of good cause.

c. Nothing in these guidelines shall affect the duty of the court to determine the amount of

allowable compensation for court appointment services in accordance with applicable statutes.

5. Upon completion of services, the attorney shall file with the clerk of the district court a written application for compensation for court appointment services and expenses. The application shall be accompanied by an itemized statement showing the time necessarily spent on the case, the nature and extent of services and expenses, the penal consequences involved, the difficulty of handling and importance of the issue, responsibilities assumed and results obtained.

a. A copy of the application shall be provided to the county attorney.

b. If written request for hearing is not filed with the clerk within fifteen days after a copy of the application has been provided to the county attorney, or if hearing is earlier waived, the clerk shall direct the application for ruling to the trial judge, or if the case was not tried, to the presiding judge in the case. If hearing is requested, the clerk shall direct the application to the appropriate judge, as above stated, for hearing and ruling.

c. When hearing is held, the parties shall have the opportunity to offer evidence relevant to the factors affecting the amount of compensation.

d. In any event, the judge with responsibility for determining compensation is encouraged to consult with other judges of the district to obtain advice and guidance. Each district should establish procedures to facilitate such consultation. Nothing in these guidelines, however, is intended to affect the prerogative of the responsible judge to determine the amount of

compensation by appropriate ruling on the application.

6. When applicable law requires compensation to be made on the basis of ordinary and customary charges for like services in the community, the court shall not reduce compensation based on an attorney's duty to represent the poor but shall consider all of the factors dictated by pertinent statutory law and supreme court decisions, including certainty of payment. Moreover, the court shall consider the evidence, its own knowledge on the subject, and any other relevant information bearing on the issue. In order to provide guidance to the court and to foster uniformity in compensation for like services in like communities in the state, the supreme court shall from time to time promulgate guidelines including a range of hourly rates reflecting ordinary and customary charges for like services in the communities of the state, as provided by statute. Until modified by subsequent order of this court, that range is determined as shown in exhibit "A" attached to these guidelines. These guidelines shall be considered by the court, along with all other relevant information, in determining the reasonable value of the attorney's services in the community in question.

7. If aggrieved by the court's ruling, either the attorney or public entity may seek appellate review of the compensation award pursuant to the certiorari rules of the supreme court.

EXHIBIT A

Amounts which cannot be exceeded without prior approval of the district court in accordance with paragraph 4(b) of the guidelines:

1. Class A felonies, $2,500.

2. Class B felonies, $1,500

3. Class C and D felonies and aggravated misdemeanors, $1,000.

4. Serious misdemeanors, $500.

5. Misdemeanors, $150.

6. Probable cause portion of parole revocation hearings, $200.

7. Postconviction relief proceedings, one-half of the present guideline for the offense in the original action.

8. Appeals to the Iowa Supreme Court, $1,600.

9. Representation of children in dissolution matters, $300.

10. Representation of patient at mental or substance abuse commitment hearing, $150.

11. Representation of party at juvenile case adjudication and disposition, $500. Representation of party at each additional review hearing to be determined by the court.

12. Representation of indigent wards, $150.

Range of hourly compensation in accordance with paragraph 6 of the guidelines: $40 to $60 per hour for

attorneys, $20 to $30 per hour for paralegal/legal assistants.

Adopted by Supervisory Order Aug. 19, 1985, effective Sept. 3, 1985. Amended Dec. 12, 1986, effective Feb. 2, 1987.

DATE	PURPOSE	HOURS
1-20-87	Conference with Client and Preparation of Application for Appointment of Counsel	1.0
1-20-87	Court Appearance Before Magistrate Beekman	.7
2-2-87	Hearing-Appointment of Counsel	2.5
2-4-87	Preparation of Order on Continuance	1.0
2-4-87	Hearing in Magistrate Court	1.0
2-5-87	Presentation of Order to Judge Mitchell	.5
2-16-87	Conference with Client	1.0
2-19-87	Letter to Dave Stock Re: Subpoenaes	.3
2-25-87	Conference with Client-Preparation for Arraignment	1.0
3-2-87	Arraignment in District Court on Charges of Riot, Going Armed with Intent and Assault Without Intent and, Hearing on Indigency	2.5
3-5-87	Research Re: Charges, Riot, Etc. Elements, Proof, Defenses	3.0
3-10-87	Review Evidence and Statements of Purviance and Witnesses	4.0
3-11-87	Investigate Possible Witnesses, Review Jury List, Conference with Client	3.5
3-14-87	Review List of Jurors, Discuss Change of Venue	2.7
3-16-87	Conference with Client	1.3
3-18-87	Appearance for Trial	3.0

4-7-87	Prepare Notice of Self-Defense	.5
	Prepare Motion for Change of Venue	1.2
	Prepare Motion to Dismiss	.7
	Prepare Request for Discovery	2.0
4-20-87	Conference with Client Re: Trial Preparation	1.0
4-20-87	Telephone Call to Dull Re: Discovery, Depositions, and Documents	.5
4-22-87	Conference with Client Re: Trial Preparation	1.0
4-23-87	Prepare Motion to Continue	.7
4-23-87	Prepare Waiver of Speedy Trial	.5
4-23-87	Telephone Calls to Court Administrator, Judge and Other Attorneys Re: Trial Schedule	1.5
4-24-87	Prepare for Depositions of Ruden and Wielenga	3.5
4-27-87	Hearing on Motion to Continue, Signing Waiver of Speedy Trial, Preparation of Order	3.0
4-28-87	Deposition of Wielenga and Ruden	4.0
5-20-87	Review Police Reports, Statements	1.0
5-21-87	Prepare for Deposition of Dekkinga	1.5
5-26-87	Hearing on Motion to Discuss	.7
	Hearing on Motion for Change of Venue	1.5
5-29-87	Deposition of Dekkinga	4.0
5-29-87	Motion in Limine	1.0
5-30-87	Review Jury List, Prepare List of Defense Witnesses	1.5

6-1-87	Preparation for Trial	6.0
6-2-87	Jury Selected, Trial Commenced	11.5
6-3-87	Trial Resumed	12.0
6-4-87	Trial Resumed	11.0
6-5-87	Trial Resumed	7.0
7-7-87	Prepare Motion to Release Exhibits and Order	1.3
	TOTAL HOURS	109.1
	109.1 hours @ $60.00	$6,546.00
	Mileage 360 @ $.25	90.00
	Telephone calls	16.50
	TOTAL	$6,652.50

PURSUANT TO THE LOCAL RULES THE CLAIMANT SUBMITS THE FOLLOWING IN SUPPORT OF THE FOREGOING CLAIM FOR ATTORNEY'S FEES:

1. TIME SPENT

see foregoing itemization

2. NATURE AND EXTENT OF SERVICES AND EXPENSES

see foregoing itemization

3. PENAL CONSEQUENCES

Attempt to Commit Murder Class "B" felony

Riot Aggravated Misdemeanor

Going Armed With Intent Class "D" Felony

Assault Without Intent Serious Misdemeanor

Since there was a firearm discharged twice the defendant was potentially subjected to the minimum

five (5) year minimum sentence without parole § 902.7 Code of Iowa.

4. DIFFICULTY OF HANDLING

The issue of justification required an investigation of the previous twelve (12) months of harassment and assaults perpetrated by the state's witnesses. This involved a total approximately fifty (50) incidents.

The defendant was living with the ex-spouse of the person involved in the altercation with the defendant and in a rural community the jurors were offended and preoccupied by this.

The police had refused the defendant any protection (due to orders from higher officials) and refused to investigate this incident, in particular refusing to investigate Jason Annstine, the neighbor boy who witnessed events just prior to the altercation.

5. IMPORTANCE OF ISSUE

The defendant was a business owner (the rental business was ruined by the harassment which the police department would not protect him from) and had previously been a police officer for the City of Des Moines with no prior convictions. If convicted of any of the offenses he would have been subject to a five year minimum mandatory sentence without parole.

6. RESPONSIBILITIES ASSUMED.

The claimant was responsible (solely) for completing the investigation of the case, investigating the prior twelve (12) months of incidents, locating the

witnesses who could confirm these events, selecting the ones best for trial, all of the research and preparation, taking of depositions, establishing the defenses of justification, compulsion and self-defense, pre-trial motions and the trial of the case.

7. RESULTS OBTAINED.

The charge of Attempt to Commit Murder was reduced to the charges of riot, going armed with intent and assault. The riot charge was dismissed by the court at the close of the state's evidence and the other two charges, including a lesser included offense of simple assault received a verdict of NOT GUILTY, thus acquitting the defendant of all criminal charges.

ORDER ON FEES (9-18-87)

On September 14, 1987, defendant's attorney's claim for attorney fees came on for hearing by the Court. Harold Postma appeared on his own behalf, and Plymouth County Attorney Robert Dull resisted on behalf of the State. Hearing was had, a stenographic record kept. The Court finds and rules as follows:

1. Harold Postma asks for fees in the amount of $6,652.50, including 109.1 hours of work at $60.00 per hour, and expenses of $96.50, which include mileage of 360 miles @ 25¢ per mile, and telephone calls of $16.50.

2. The hours were expended and necessary.

3. The usual allowance of attorney fees in this district is at a rate of $45.00 per hour, and mileage is at the rate of 21¢ per mile.

4. In the instant case Harold Postma was appointed to defend the defendant on charges which included a Class "D" felony, an aggravated misdemeanor, and a serious misdemeanor. The charges all arise out of the same factual situation.

5. The Iowa Supreme Court Supervisory Order of August 19, 1985, provides in part in paragraph 4:

> "4. In performing services, attorneys shall be governed by applicable statutes and rules as well as by relevant provisions of the Iowa Code of Professional Responsibility for Lawyers.
>
> a. When required to do so by law, or when the attorney has any question about the propriety of incurring a particular expense, the attorney shall

obtain court approval before incurring the obligation.

b. In addition, the attorney must obtain advance district court approval for anticipated compensation in excess of amounts that shall be established for particular categories of cases from time to time by the Supreme Court. Until modified by subsequent order of this court, those amounts are as shown on Exhibit "A" attached to these guidelines."

* * *

Exhibit A further provides:

EXHIBIT A

"Amounts which cannot be exceeded without prior approval of the district court in accordance with paragraph 4(b) of the guidelines:

1. Class A felonies, $2,500.
2. Class B felonies, $1,500.
3. Class C and D felonies and aggravated misdemeanors, $1,000.
4. Serious misdemeanors, $500.
5. Misdemeanors, $150.
6. Appeals to the Iowa Supreme Court, $1,600.
7. Representation of children in dissolution matters, $300.
8. Representation of patient at mental or substance abuse commitment hearing, $150.
9. Representation of party at juvenile case adjudication and disposition, $500. Representation of party at each additional review hearing to be determined by the Court.

Range of hourly compensation in accordance with paragraph 6 of the guidelines:

$40 to $60 per hour."

6. This Court believes that when the Supreme Court says "must," prior approval for exceeding the guidelines is mandatory, and that upon failure of defendant's attorney to make such application, the Court has no power to exceed the guidelines.

7. The Court fixes and approves attorney fees in this case in the sum of $1,000.00 plus expenses of $92.10 (mileage 360 @ 21¢ or $75.60, and telephone calls of $16.50) for a total of $1,092.10.

Accordingly, the Court orders the sum of $1,092.10 paid out of the county treasury. The Clerk is directed to certify a copy of the claim and this order to the County Auditor for payment to the claimant Harold Postma, as provided by statute.

Dated this 18th day of September, 1987.

MOTION FOR NEW TRIAL (9-28-87

COMES NOW Harold O. Postma, Court-Appointed Attorney for the Defendant in the above case and for his Motion for New Trial (hearing) pursuant to Rule 244 and for Enlarged and Amended Findings of Facts pursuant to Rule 179 respectfully states as follows:

1. The determination of the award of attorney's fees is contrary to the Guidelines on Cost of Court-Appointed Counsel. Even under the stringent interpretation of the court the court should have awarded $1,000 for the Class

D felony, $1,000 for the aggravated misdemeanor and $500 for the serious misdemeanor plus the out of pocket expenses incurred.

2. The court has made a mistake of fact in determining that "The usual allowance" of attorney's fees should apply in this case. The attachment to the Claim for Attorney's Fees setting out the penal consequences, the difficulty of handling, the importance of the issue, the responsibility assumed and the results obtained; all indicate that this is anything other than a usual case.

3. The Order entered on September 18, 1987, is contrary to law, as follows:

a. The decision is contrary to the constitutional right to have the assistance of counsel. Sixth Amendment, Constitution of the United States and Article 1, § 10, Constitution of the State of Iowa.

b. § 815.7 requires that a court-appointed attorney "shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community."

c. The Guidelines themselves state that their purpose is "not to inhibit reasonably necessary services" and that "Nothing in these guidelines shall affect the duty of the court to determine the amount of allowable compensation for court appointment services in accordance with applicable statutes."

4. The court has failed to rule on the issue of equitable estoppel wherein the claimant set forth the fact and argument that the claimant was misled by the State of Iowa as to its intentions with regard to prosecuting this

case which caused the claimant to anticipate that the guidelines would not be exceeded and the undersigned claimant relied on this to his detriment. It should be noted that the $2,500 limit would not have been exceeded if the case had not gone to trial.

WHEREFORE, the undersigned prays the court to hold a new hearing on this matter and upon such hearing to issue a new Order which sustains the Claim for Attorney's Fees in full as applied for by the claimant.

ORDER DENYING MOTION (10-12-87)

NOW ON THIS 12 day of October 1987, defendants attorney's motion for new trial and amended and enlarged findings of facts comes on for ruling by the Court. The motion rehashes matters taken up by the Court previously and ruled upon. The Court finds no reason to change its prior ruling of September 14, 1987. Defendants attorney has failed to comply with the requirement of the Iowa Supreme Court Supervisory Order and so is not entitled to an amount greater than provided in "Exhibit A." The case is not of greater difficulty than Class "A" felony cases for which $45.00 per hour is the usual attorney fee. Accordingly, the Court overrules the motion.

PETITION FOR WRIT OF CERTIORARI (11-12-87)

The Claimant respectfully states:

1. The Claimant, following the acquittal of the Defendant, Michael C. Purviance, on charges of Riot (dismissed at the close of the State's evidence), Going Armed With Intent and Assault without Intent, filed a claim for

Attorney's Fees for 109.1 hours and requested compensation at the rate of $60.00 per hour and reimbursement of expenses of $96.50.

2. Attached to the claim was an itemization of all of the time spent together with statements concerning the penal consequences, the difficulty of handling, the importance of the issues involved, the responsibilities assumed and the results obtained, all as required by the local rules of court. A copy of the claim with the attachments is attached hereto and collectively marked Exhibit "A."

3. Hearing was held on September 14, 1987, but the County Attorney never filed any resistance on behalf of Plymouth County. All services were rendered prior to June 30, 1987, and thus the claim is entirely payable by Plymouth County, Iowa.

4. At the hearing the county attorney raised the issue of the lack of prior approval of exceeding the Guidelines on Cost of Court-Appointed Counsel as contained in the Supreme Court Supervisory Order dated August 19, 1985.

5. In response the claimant raised the legal argument that the county was equitably estopped from asserting that issue since the county attorney had indicated that the case would not be pursued, both by his statements and conduct.

6. Additionally the claimant asserted the fact that this case involved the discharge of a firearm which would impose a minimum mandatory sentence of five (5) years in the event of a conviction pursuant to § 902.7 of the

Code of Iowa and that the Guidelines do not expressly set forth an amount for this.

7. On September 18, 1987, the court entered its ruling which found that the hours were necessary, that the usual allowance of attorney fees is at the rate of $45.00 per hour, that there were three charges against the defendant, a Class "D" felony, an aggravated misdemeanor and a serious misdemeanor. The court then found that without prior approval for exceeding the guidelines the Court had no power to exceed the guidelines and then approved fees in the amount of $1,000.00 plus expenses of $92.10 without ruling on the issues of equitable estoppel and without allowing a fee for the aggravated misdemeanor or the serious misdemeanor assuming that the $1,000.00 was for the Class "D" felony.

8. On September 28, 1987, the Claimant filed a Motion for New Trial and Amended and Enlarged Findings of Fact alleging that the court had erred and should have allowed fees of $2,500.00 as a minimum if the court is correct in its interpretation of the Guidelines.

9. The Claimant further urged that an hourly fee other than the the usual $45.00 per hour rate was appropriate and that the court's decision was contrary to law for the reasons that it is an infringement on the right to assistance of counsel, Sixth Amendment, U.S. Constitution and Article I, § 10, Constitution of the State of Iowa; that § 815.7 requires that a court-appointed attorney "*shall* be entitled to a reasonable compensation which *shall* be the ordinary and customary charges in the community," and that the Guidelines defer to this statute and the constitution by stating that their purpose is "not to

inhibit reasonably necessary services" and that "Nothing in these guidelines shall affect the duty of the court to determine the amount of allowable compensation for court appointment services in accordance with applicable statutes."

10. The Claimant further urged the court to specifically rule on the issue of equitable estoppel.

11. The court, on October 13, 1987 entered its order overruling the motion without ruling on the issue of equitable estoppel.

12. The court acted illegally by contravening § 815.7 of the 1987 Code of Iowa, the Sixth Amendment of the United States Constitution and Article 1, § 10 of the Constitution of the State of Iowa and for all of the above reasons set forth and previously urged on the court at the hearing and upon the Motion for New Trial.

WHEREFORE, the Claimant prays that a Writ of Certiorari issue herein; and that, on return thereto, the ruling and orders below be annulled and the claimant be granted the full amount of his claim.

ATTACHMENTS OMITTED

AMENDED WRIT OF CERTIORARI (3-11-87)

The Claimant, in accordance with the Order of this court and Rule 303 of the Iowa Rules of Appellate Procedure submits the following Amended Petition For Writ of Certiorari:

1. The entire hearing on September 14, 1987, on the Claim For Attorney's Fees was reported. No testimony was received except for the statements of the claimant as an officer of the court.

2. Attached hereto and by this reference made a part hereof is a copy of the ruling of the court entered on September 18, 1987, and a copy of the final Order appealed from which was entered on October 13, 1987.

ATTACHMENTS OMITTED

WRIT OF CERTIORARI (3-25-87)

TO: Honorable Phillip Dandos
Judge of the District Court
Plymouth County Courthouse
Le Mars, IA 51031

WHEREAS, on the petition of the plaintiff, it has been made to appear to the Honorable W. W. Reynoldson, Senior Judge of the Supreme Court of Iowa, that the District Court has exceeded its jurisdiction in and for the District Court of Plymouth County, State of Iowa, and is proceeding illegally in the matter of: State of Iowa vs. Michael Purviance, Plymouth Co. No. 4091A.

YOU ARE, THEREFORE, hereby directed to proceed herein in conformance with Iowa Rule of Appellate Procedure 303.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Des Moines this 23rd day of March, 1988.

/s/ David M. Ewert
DAVID M. EWERT
Deputy Clerk of the
Iowa Supreme Court

IN THE SUPREME COURT OF IOWA

HAROLD O. POSTMA, Plaintiff, vs. **IOWA DISTRICT COURT FOR PLYMOUTH COUNTY,** Defendant.	)	Filed April 19, 1989 107 87-1594

Certiorari to the Iowa District Court for Plymouth County, Phillip S. Dandos, Judge.

Plaintiff in certiorari action challenges the attorney fees allowed as a court-appointed attorney in a criminal case. **WRIT ANNULLED.**

Harold O. Postma, Orange City, pro se.

Robert J. Dull, County Attorney, for defendant.

Considered en banc.

PER CURIAM.

In this original certiorari action, plaintiff Harold O. Postma challenges the district court's order setting his fees for working as a court-appointed attorney in a criminal case. Postma contends that: 1) the county attorney is equitably estopped from asserting the cost guidelines for court-appointed counsel; 2) these guidelines violate the federal and state constitutions; 3) they also contravene the statutory requirement for reasonable compensation; and 4) the guidelines were incorrectly applied. We find no merit in these assertions.

Postma was the privately-retained attorney for a defendant charged with assault with intent to commit murder. A week later, the criminal defendant applied for the appointment of counsel. After an extended hearing, Postma was appointed on March 2, 1987, to represent the defendant at public expense. At that time, the defendant was charged in one information with three counts: 1) riot; 2) going armed with intent; and 3) assault without intent. The case was set for trial on March 18, 1987. However, the case was continued on two occasions and finally commenced on June 2, 1987. The defendant was ultimately acquitted of all charges.

Postma submitted a claim for attorney fees, requesting payment for 109.1 hours at $60 per hour and expenses of $96.50. At the fee hearing, it was brought to the court's attention that Postma failed to receive prior court approval for exceeding the cost guidelines for court-appointed counsel contained in a supreme court supervisory order dated August, 1985. The appropriate guideline allowed a fee of $1,000.

The district court found the usual fee for such matters was $45 per hour. However, the court interpreted the supervisory order to mandate that a court-appointed attorney must obtain prior approval before exceeding the guidelines. Accordingly, the trial court limited the fees allowed to the sum of $1,000 plus expenses of $96.10 [sic].

The supervisory order of August 19, 1985, providing guidelines for the cost of court-appointed counsel, in pertinent part states:

1. In implementation of its constitutional duty to exercise supervisory and administrative control of the judicial department, the supreme court deems it necessary to adopt these guidelines to establish procedures for carrying out judicial department responsibilities relating to payment of attorney fees and expenses for indigents when the law requires such payment from public funds.

. . . .

4. In performing services, attorneys shall be governed by applicable statutes and rules as well as by relevant provisions of the Iowa Code of Professional Responsibility for Lawyers.

a. When required to do so by law or when the attorney has any questions about the propriety of incurring a particular expense, the attorney shall obtain court approval before incurring the obligation.

b. In addition, *the attorney must obtain advance district court approval* for anticipated compensation in excess of amounts that shall be established for particular categories of cases from time to time by the supreme court. Until modified by subsequent order of this court, those amounts are as shown on exhibit attached to these guidelines.

(1) The purpose of requiring such approval is not to inhibit reasonably necessary services, but to provide a system for monitoring and a basis for predicting and budgeting amounts necessary for such compensation.

(2) In determining whether an application should be sustained, the court shall consider whether the anticipated services are necessary in the reasonable professional judgment of counsel. The requirement that an application be made shall not have any bearing on whether an application should be sustained. Moreover, the

court shall not require disclosure by the attorney of any information not subject to discovery under applicable law.

(3) Such applications, except as to appeals, ordinarily shall be made at arraignment, and in any event within the period available for discovery prior to trial. They shall not be made later except upon a showing of good cause.

c. Nothing in these guidelines shall affect the duty of the court to determine the amount of allowable compensation for court appointment services in accordance with applicable statutes.

. . . .

6. When applicable law requires compensation to be made on the basis of ordinary and customary charges for like services in the community, the court shall not reduce compensation based on an attorney's duty to represent the poor but shall consider all of the factors dictated by pertinent statutory law and supreme court decisions, including certainty of payment. Moreover, the court shall consider the evidence, its own knowledge on the subject, and any other relevant information bearing on the issue. In order to provide guidance to the court and to foster uniformity in compensation for like services in like communities in the state, the supreme court shall from time to time promulgate guidelines including a range of hourly rates reflecting ordinary and customary charges for like services in the communities of the state, as provided by statute. Until modified by subsequent order of this court, that range is determined as shown in exhibit attached to these guidelines. These guidelines shall be considered by the court, along with all other relevant information, in determining the reasonable value of the attorney's services in the community in question.

(Emphasis added.)

I. *Equitable estoppel.* Postma claims that the county attorney had indicated to him that the case was going to "die a natural death." These statements were apparently made sometime between the arraignment and March 18, when the matter was first set for trial. Postma stated that he did not know the case was going to trial until the week beforehand.

The evidence falls far short of a showing of equitable estoppel. Postma's own statements show continual preparation for trial in March, April and May. Postma's estoppel contention is also inconsistent with his statement of services rendered and the record before the district court. Equitable estoppel requires proof of both a clear and definite oral agreement and that the plaintiff acted to his detriment, solely relying on the agreement. *Colthurst v. Colthurst*, 265 N.W.2d 590, 598 (Iowa 1978). Postma failed to establish equitable estoppel.

II. *Constitutional Claims.* We agree with Postma that his client was entitled, under the federal and state constitutions, to court-appointed counsel. Postma maintains that the guidelines create a chilling effect which is unnecessary and therefore excessive. We find no merit in this claim.

The guidelines were established to carry out our responsibility regarding the payment of attorney fees and expenses for indigents. Although Postma claims the guidelines create a chilling effect on defendant's exercise of constitutional rights, he does not support this assertion with either facts or conclusions. The facts before us are, in fact, to the contrary.

Nor do we believe that the guidelines create a presumption of prejudice. We are aware that the United States Supreme Court has recognized that a per se violation of the right to effective counsel may exist even though counsel is available if "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *United States v. Cronic*, 466 U.S. 648, 659-60, 104 S. Ct. 2039, 2047, 80 L. Ed. 2d 657, 668 (1984). There is no showing in the record of any such likelihood. Postma cited no cases in support of his theory. The accused had the benefit of counsel. The matter of reduced compensation arose from his counsel's failure to observe the rules.

We hold that Postma's claim concerning the violation of his client's constitutional rights is without merit.

III. *Contravention of Statutory Requirement for Reasonable Compensation*. Our statute expressly requires the court to award "reasonable compensation which shall be the ordinary and customary charges for like services in the community" to the "attorney appointed by the court to represent any person charged with a crime in the state." Iowa Code § 815.7 (1987). Postma urges that the guidelines render section 815.7 meaningless or, at best, sharply curtail its applicability. He also claims the judicial department does not have the power to implement section 815.7. He points out that these guidelines were adopted after securing the recommendations of the Iowa Judicial Council and the Supreme Court Advisory Committee on Cost of Court-Appointed Counsel, along with comments and statements received at public hearings. He asserts that because this order was never presented to the

general assembly for its approval, it is invalid. *See* Iowa Code § 602.4202 (1987).

The legislature charged the judiciary with the decision-making process in determining a reasonable compensation. § 815.7. "The Supreme Court . . . shall exercise supervisory and administrative control over the inferior Judicial tribunals throughout the State." Iowa Const. art. V, § 4. This supervisory order falls within the court's exercise of supervisory power, rather than a rule of procedure which must be approved by the legislature pursuant to the rule-making procedures set out in section 602.4202.

Courts do not have authority to legislate. *Knudtson v. Swenson*, 261 Iowa 929, 931, 155 N.W.2d 756, 757 (1968). However, these guidelines do not alter or infringe upon section 815.7's provision allowing a reasonable compensation for court-appointed attorneys. *See Guidelines* § 4(c).

The guidelines do set out certain amounts which cannot be exceeded without prior approval of the court. However, they have sufficient flexibility to meet the statutory requirement of reasonable compensation. The mechanism requiring prior approval to allow a greater fee is a part of the order. *Guidelines*, § 4. Plaintiff failed to request that he be allowed to exceed the guidelines. Outside of his estoppel claims, plaintiff offers no reason or excuse for this failure. If the fee that he has been allowed is not "a reasonable fee," which the legislature prescribed under the statute, his failure to make a timely request caused plaintiff's complaint, rather than the guidelines. Thus, the supervisory order does not contravene statutory requirements.

IV. *Multiple Charges*. Postma finally argues that the three charges against his clients, involving a class "D" felony, an aggravated misdemeanor and a serious misdemeanor, would allow for fees of $1,000, $1,000, and $500 respectively. He maintains they were separate charges and required distinctive, unrelated elements of proof.

Although plaintiff's client was charged with three different crimes under the trial information, they all arose out of the same incident. We see no difference between this situation and a single charge that has several included offenses. If the charges had arisen out of different incidences, we would find validity in his arguments. Here, we find no merit in his contention.

WRIT ANNULLED.

All justices concur except Carter and Schultz, JJ, who dissent, and Snell, J., who takes no part.

This opinion is to be published.

SCHULTZ, J. (dissenting).

Reducing the fee that Postma earned by over 75% seems an unduly harsh punishment for his failure to ask, "Mother may I?" The trial court agreed that the time spent was necessary to properly defend the accused. I believe Postma's failure to seek prior court approval should not alone be determinative of what his reasonable compensation is. Rather, it should be considered, along with other factors, in deciding the issue.

CARTER, J. (dissenting).

I agree with the majority that a failure to adhere to the rule requiring advance approval of court-appointed

counsel fees which exceed the published guidelines would deprive the district court of a valuable tool in controlling those costs. The present result is untenable, however, because the amount of the fee allowed to attorney Postma is less than that which is reflected by the attorney's hours at trial.

The guidelines are effective primarily at controlling excessive pretrial preparation time. They have slight, if any, remedial effect in curbing an attorney's trial hours. A trial ordinarily takes as long as it takes. If a trial is being needlessly prolonged, the district court has other means at its disposal to deal with that problem.

I believe attorney Postma, at a minimum, is entitled to be compensated in full for his trial time. To deny him that much is punitive. I would also allow him the full guideline fee, in addition to compensation for hours spent at trial, because it is obvious that pretrial preparation exhausted the guideline compensation.